



Docket No.: 50090-290

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of

Keiichiro WAKAMIYA, et al.

Serial No.: 09/818,906

Filed: March 28, 2001

For: SEMICONDUCTOR DEVICE

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Group Art Unit: 2811

Examiner: N. Parekh

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Jaw.

**REQUEST FOR RECONSIDERATION**

Commissioner for Patents  
Washington, DC 20231

Sir:

Reconsideration of the rejections imposed in the Office Action dated June 14, 2002 is solicited in light of the following remarks.

**REMARKS**

**Claim 1 was rejected under the first paragraph of 35 U.S.C. §112 for lack of adequate enabling support.**

In the statement of the rejection, the Examiner asserted that specification does not enable how to form a plurality of layers of the same material having different hardnesses. This rejection is traversed as **legally erroneous**.

Lack of enablement under the first paragraph of 35 U.S.C. §112 is a **question of law**. *U.S. Steel Corp. v. Phillips Petroleum Co.*, 865 F.2d 1247, 9 USPQ2d 1461 (Fed. Cir. 1989); *U.S. v. Telectronics Inc.*, 857 F.2d 778, 8 USPQ2d 1217 (Fed. Cir. 1988). In